

Impact of the SAFE Act on Individual Civil Rights: Themes in Testimony

1. The number of eligible Kansans who are prevented or deterred from registering or casting their vote is greater than the number of cases of voter fraud identified and prosecuted, suggesting that these requirements may be doing more harm than good for Kansas' voting population.¹
2. While reasonable burdens on voting were deemed constitutional under *Crawford v. Marion County*, the additional citizenship requirements under the SAFE Act may pose a severe burden for voting in Kansas, which could therefore render this requirement unconstitutional.² Research shows that the more demanding the requirements are for voting, the more turnout is suppressed.³
3. The citizenship requirement was reportedly included in order to prevent voter fraud cause by undocumented people voting.⁴ However, the cases of voting fraud that have been identified in the past several decades have not substantiated this concern.⁵ This suggests that perhaps there was improper intent behind this requirement.
4. Additionally, Kansas is the only state to give prosecutorial authority to the Secretary of State. Procedural irregularities in a regulation can suggest that discriminatory intent may be present.⁶
5. Young voters⁷ and black voters⁸ were identified as groups who were experiencing disproportionate representation on the suspense voters list. Suspense voters were also far more likely to be unaffiliated and far less likely to register as Republican.⁹ Suspense voters tend to be concentrated in certain census tracks, such as in Johnson County, suburban Kansas City, Sedgewick County/Wichita, Shawnee County, and Douglas County.¹⁰ Opponents of the SAFE Act believe that the high number of people on the suspense list indicate that the ACT is having a direct and damaging effect on voter participation,¹¹ Proponents of the SAFE Act suggest that the 90-day rule for purging the suspended voters list is a valuable step in encouraging voters to fix registration in a

¹ Bonney Testimony, p. 67, p. 69-70; Overstreet Testimony, p. 90; Byington Testimony, p. 118; Johnson Testimony, p. 155-157; Ward Testimony, p. 220-221

² Levy Testimony, p. 21-23

³ Birkhead Written Testimony

⁴ Johnson Testimony, p. 155

⁵ Johnson Testimony, p. 156-157; Ward Testimony, p. 220-221

⁶ Levy Testimony, p. 16; Overstreet Testimony, p. 116

⁷ Smith Testimony, p. 35, p. 60-62; Bonney Testimony, p. 68

⁸ Smith Testimony, p. 42

⁹ Smith Testimony, p. 31-32

¹⁰ Smith Testimony, p. 35

¹¹ Bonney Testimony, p.69

timely manner.¹² They also say that often the people on the suspense list never finish registering simply because the move, as was the case for 40% of suspended voters on the Sedgewick County rolls, so purging the list is just a way to decrease costs from sending those people reminders.¹³

6. Opponents of the SAFE Act say attestation of citizenship under penalty of perjury, like used on the Federal registration form, is sufficient;¹⁴ Proponents say that this is not sufficient in an increasingly mobile society and that confusion can lead non-citizens to fill out a form even if they are not eligible.¹⁵ At the time of this hearing, registering with the Federal form placed voters on the suspense list until documentation of citizenship provided.¹⁶ The day after this hearing, the Executive Director of the Election Assistance Commission, Brian Newby, approved Kansas and two other states that require documentary proof of citizenship to require these to be presented when registering using the federal form. This decision goes against previous rulings by both the EAC and the Supreme Court and is currently being challenged in court.¹⁷
7. These identification requirements disproportionately burden people who struggle with mobility, including the elderly, for whom it is more difficult to access transportation to get an ID and more difficult to manage all of the required documentation.¹⁸ As Kansas is a rural state, people may live great distances from where they can obtain IDs.¹⁹ This is especially true for people with mental illness or physical disabilities who are living in assisted living or skilled nursing facilities. For them, access to transportation and funds is difficult, but they also do not meet requirements for permanent advanced voting.²⁰ People without a permanent home were also identified as having greater difficulty obtaining and keeping track of the documents required.²¹
8. It can be difficult or nearly impossible for transgender/gender non-conforming people to obtain documentation that reflects their legal/preferred name and gender identity, and the process for changing these documents is complex and cost-prohibitive. This leaves transgender/gender non-conforming people at risk of experiencing violence and rejection at their polling place if their identification does not “look” like them.²²

¹² Engelbrecht Testimony, p. 152

¹³ Kobach Testimony, p. 233

¹⁴ Bonney Testimony, p. 93

¹⁵ Engelbrecht, p. 148-149, p. 187

¹⁶ Bonney Testimony, p. 106; Johnson Testimony, p. 160

¹⁷ Brennan Center for Justice, *Proof of Citizenship Action Illegal, Federal Suit Says*, Feb. 12, 2016. Available at: <https://www.brennancenter.org/press-release/proof-citizenship-action-illegal-federal-suit-says>

¹⁸ Byington Testimony, p.120, p. 261-264

¹⁹ Mah Written Testimony

²⁰ Elliot Testimony, p. 73-74; Shew Testimony, p. 164-165

²¹ Shew Testimony, p. 165

²² Boatman Written Testimony

9. The additional rules created by the SAFE Act create more opportunities for mistakes in implementation, for example a poll worker turning people down because they are not aware of all acceptable forms of ID.²³
10. The additional requirements have created a burden not only on individuals, but also on community groups and local elections agencies. A substantial amount of time and funds are being directed towards ensuring people have access to this fundamental right.²⁴
11. Although photo IDs and Kansas birth certificates for the purpose of voting can be obtained from the State free of charge, the time it takes to acquire this ID is substantial and often the workers mistakenly try to charge individuals anyway.²⁵ For voters born out of state, the cost associated with purchasing an out-of-state birth certificate can be substantial and was compared to the modern equivalent of a poll tax.²⁶
12. Proponents of the SAFE Act suggest that the difference in turnout between past several elections results primarily from the interest-level around different elections²⁷ and registration has actually increased.²⁸ As a measure of the law's success, they also cite polls indicating that people in Kansas favor photo ID and citizenship requirements.²⁹
13. Proponents of the SAFE Act also suggest that citizenship and ID requirements are intuitive for native-born citizens and expected for naturalized citizens and assert that proof of citizenship is a reasonable requirement, offering that both Mexico and Canada require voters to document citizenship.³⁰
14. The Committee had difficulty identifying proponents of the SAFE Act to present as finalists. It is unclear if this reflects the popularity of the SAFE Act or a political climate in which proponents do not feel the need to make themselves heard.
15. Acknowledging that some citizens are concerned about the potential for voter fraud, the Committee recommends that more information is gathered from opponents to these voting requirements regarding satisfactory requirements that can avoid voter suppression while also protecting election integrity.

²³ O'Toole Testimony, p. 80-83; See Mah Written Testimony for many more examples

²⁴ King Testimony, p. 123-125; Hammet Testimony, p. 127-128; Davis Testimony, p. 130-132; Ahrens Testimony, p. 142-143; Shew Testimony, p. 166, p. 173

²⁵ Ahrens Testimony, p. 139-140; Byinton Testimony, p. 261-264

²⁶ Ahrens Testimony, p. 142; Davis Testimony, p. 131

²⁷ Fitzgerald Testimony, p. 194; Kobach Testimony, p. 208-212

²⁸ Kobach testimony, p. 241

²⁹ Kobach Testimony, p. 240-206

³⁰ Engelbrecht Testimony, p. 146-150.